

Joseph M. Alioto (SBN 42680)
Tatiana V. Wallace, Esq. (SBN 233939)
Angelia Alioto-Grace (SBN 206899)
ALIOTO LAW FIRM
One Sansome Street, 35th Floor
San Francisco, CA 94104
Telephone: (415) 434-8900
Email: jmalieto@aliotolaw.com

[Additional Counsel Listed on Last Page]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

CALIFORNIA CRANE SCHOOL, INC.,
on behalf of itself and all others similarly
situated

Plaintiff,

vs.

GOOGLE LLC, ALPHABET, INC., XXVI
HOLDINGS, INC., APPLE, INC., TIM
COOK, SUNDAR PICHAI, and ERIC
SCHMIDT,

Defendants.

Case No: 4:21-cv-10001 HSG

**PLAINTIFFS OPPOSITION TO
DEFENDANTS MOTION TO COMPEL
ARBITRATION; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF**

Hearing Date: August 11, 2022

Time: 2:00 p.m.

Place: Courtroom 2

Judge: Hon. Haywood S. Gilliam Jr.

Plaintiffs respectfully submit this memorandum in support of their opposition to the
Google Defendants' motion to compel arbitration.

PRELIMINARY STATEMENT

Defendants' motion to compel arbitration should be denied. Arbitration is not
permitted in this case because Plaintiffs' Amended Complaint includes a specific claim for

*Plaintiffs Opposition to Defendants Motion to Compel Arbitration; Memorandum of Points and Authorities in
Support Thereof*

1 public injunctive relief that seeks to prevent Defendants’ future violations of law for the
2 benefit of the general public as a whole. See *Hodges v. Comcast* (cite)

3 **ARGUMENT**

4 Section 2 of the Federal Arbitration Act (“FAA”) provides that “[a] written provision
5 in . . . a contract . . . to settle by arbitration a controversy thereafter arising out of such contract
6 . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in
7 equity for the revocation of any contract.” 9 U.S.C. § 2. The final clause of § 2—the “saving
8 clause”—confirms that arbitration agreements, like any other contract, can be invalidated on
9 generally applicable grounds “for the revocation of any contract.” 9 U.S.C. § 2. *See also*
10 *Hodges v. Comcast*, 12 F. 4th 1108 (9th Cir. 2021). This case involves one such ground for
11 contractual invalidation under California law.
12

13 Since Plaintiffs’ Amended Complaint seeks “public injunctive relief” as one of its
14 requested remedies, the complaint implicates the “*McGill Rule*.” Under that rule, a
15 contractual provision “purports to waive [a party’s] right to request in any forum . . . public
16 injunctive relief, it is invalid and unenforceable under California law.” *See Hodges v. Comcast*
17 12 F. 4th 1108 (9th Cir. 2021), *citing McGill v. Citibank*, N.A., 393 P.3d 85, 94 (Cal. 2007).
18

19 In *Hodges*, the Court of Appeals for the Ninth Circuit held that the applicability of the
20 McGill rule depends upon whether a complaint includes a claim for public injunctive relief.
21 Taking into account *Blair v. Rent-A-Center, Inc.*, 928 F.3d 819 (9th Cir. 2019) (holding that
22 the Federal Arbitration Act does not preempt the *McGill* rule), the court panel held that, under
23 California law, non-waivable public injunctive relief is limited to forward-looking injunctions
24 that seek to prevent future violations of law for the benefit of the general public as a whole, as
25
26
27

1 opposed to a particular class of persons, and that do so without the need to consider the
2 individual claims of any non-party.

3 In this case, Plaintiffs' First Amended Complaint (ECF 39) seeks "Forward-Looking
4 Public Injunctive Relief for the General Public as a Whole" as follows:

5 162. For the benefit of the general public as a whole, it is requested that the Court:

6 a. Enjoin Defendants from future agreements that Apple not compete with
7 Google in the search business and to divide the search business, from future
8 agreements to share or pool profits, from future agreements to provide Google with
9 exclusive search privileges on Apple devices and from future agreements to meet for
10 the purpose of discussing anticompetitive conduct;

11 b. Enjoin and prohibit Defendant Cook and Defendant Pichai from
12 making future agreements that Apple not compete with Google in the search business
13 and to divide the search business, from making future agreements for Google to share
14 or pool profits with Apple, from making future agreements to provide Google with
15 exclusive search privileges on Apple devices and from making future agreements to
16 meet for the purpose of discussing such anticompetitive conduct.

17 *See*, Plaintiffs' First Amended Complaint, ¶162.

18 Under the above legal standard, Plaintiffs' complaint clearly seeks public injunctive
19 relief. Accordingly, the McGill rule is implicated, and the arbitration agreement should not be
20 enforced. Therefore, Defendants' motion should be denied.

21 Dated: April 1, 2022

ALIOTO LAW FIRM

22 By: /s/ Joseph M. Alioto

23 Joseph M. Alioto (SBN 42680)
24 Tatiana V. Wallace (SBN 233939)
25 Angelina Alioto-Grace (SBN 206899)
26 One Sansome Street, Suite 3500
27 San Francisco, CA 94104
28 Telephone: (415) 434-8900
Attorneys for Plaintiffs

ADDITIONAL PLAINTIFFS COUNSEL:

Lawrence G. Papale (SBN 67068)
LAW OFFICES OF LAWRENCE G.
PAPALE
1308 Main Street, Suite 117
St. Helena, CA 94574
Telephone: (707) 963-1704
Email: lgpapale@papalelaw.com

Robert J. Bonsignore (SBN
BONSIGNORE TRIAL LAWYERS, PLLC
193 Plummer Hill Rd.
Belmont, NH 03220
Phone: 781-350-0000
Email: rbonsignore@classactions.us

Theresa Moore (SBN 99978)
LAW OFFICE OF THERESA D. MOORE PC
One Sansome Street, 35th Floor
San Francisco, CA 94104
Phone: (415) 613-1414
tmoore@aliotolaw.com

Josephine Alioto (SNB 282989)
THE VEEN FIRM
20 Haight Street
San Francisco CA 94102
Telephone: (415) 673-4800
Email: jalioto@veenfirm.com

Christopher A Nedeau (SBN 81297)
NEDEAU LAW PC
154 Baker Street
San Francisco, CA 94117-2111
Telephone: (415) 516-4010
Email: cnedeau@nedeaulaw.net

Lingel H. Winters, Esq. (SBN 37759)
LAW OFFICES OF LINGEL H. WINTERS
388 Market St. Suite 1300
San Francisco, California 94111
Telephone: (415) 398-2941
Email: sawmill2@aol.com

Jeffrey K. Perkins (SBN 57996)
LAW OFFICES OF JEFFREY K. PERKINS
1550-G Tiburon Boulevard, #344
Tiburon, California 94920
Telephone: (415) 302-1115
Email: jeffreykperkins@aol.com